

Exhibit 5

Maggio, Santo C.

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 In re REFCO, INC. SECURITIES
5 LITIGATION 07-MDL-1902

6 This Document Relates To:

7 In re REFCO, INC. SECURITIES
8 LITIGATION 05 Civ. 8626
9 (GEL)

10 And All Other Cases Subject to Deposition
11 Protocol Order

12 VOLUME 1

13 December 14, 2009
14 9:39 a.m.
15
16 Videotaped deposition of SANTO C. MAGGIO,
17 pursuant to notice, at the offices of White &
18 Case LLP, 1155 Avenue of the Americas, New York,
19 New York, before Eric J. Finz, a Shorthand
20 Reporter and Notary Public within and for the
21 State of New York.

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1 SANTO C. MAGGIO
 2 MS. RENDON: Objection to
 3 form.
 4 A. I mentioned with the FCM that
 5 we took \$25 million out of the segregated
 6 accounts and sent it to Refco Capital
 7 Corp.

8 Q. Did you take that money
 9 directly out of the segregated account or
 10 did you have to transfer it somewhere
 11 first before you could use it?

12 A. We transferred it to Refco
 13 Capital.

14 Q. Refco Capital Corporation or
 15 Refco Capital Markets?

16 A. Actually Refco Capital Corp.

17 Q. And what was Refco Capital
 18 Corporation?

19 A. It was a nonregulated entity
 20 in Refco that handled the treasury and
 21 financing and banking arms or cash
 22 management arms -- cash management for
 23 Refco Group in the entire '90s and early
 24 2000s.

25 Q. Did Refco Capital Corp. serve

1 SANTO C. MAGGIO
 2 as the bank of Refco?
 3 A. Yes.
 4 Q. And could you describe for me
 5 a little bit about what that means?
 6 A. Refco had a number of
 7 subsidiaries. Most of those subsidiaries
 8 were operating companies that transacted
 9 businesses with clients, as well as banks
 10 and broker/dealers. So on every day
 11 there was what we had a settlement. So
 12 because each company was working very
 13 thin as it relates to its own cash
 14 reserves, each company was instructed to,
 15 if they had any extra money to send it to
 16 RCC, Refco Capital Corp.

17 So at the end of the day each
 18 company had needs and also had extra
 19 money. And so they informed RCC what
 20 their needs would be for daily settlement
 21 or if they were going to send them any
 22 extra money that they may have from its
 23 settlement.

24 Q. What was the primary source of
 25 funding for Refco Capital Corp.?

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1 SANTO C. MAGGIO
 2 A. Excuse me?
 3 Q. Let me re-ask the question.
 4 I'll ask a different question.

5 What was the primary source of
 6 funding for Refco Capital Corp.?

7 A. The largest, the largest
 8 lender or largest funder for Refco
 9 Capital Corp. was Refco Capital Markets.

10 Q. And I think you mentioned
 11 earlier that was the Bermuda entity;
 12 right?

13 A. Yes.

14 Q. And it was unregulated; right?

15 A. Yes.

16 Q. Did Refco Capital Markets or
 17 RCM, have employees in Bermuda?

18 A. For a period of time.

19 Q. For what period of time?

20 A. From 1995 through 2001 or
 21 2002.

22 Q. And during that period of
 23 time, 1995 through 2001 or 2002, did
 24 Refco Capital Markets have operations in
 25 Bermuda?

1 SANTO C. MAGGIO
 2 A. Yes.
 3 Q. And what were those
 4 operations?
 5 A. You know, primarily the
 6 operations were FX, foreign exchange,
 7 where we had a group of traders and we
 8 also had the back office. And then we
 9 also had a small securities group there
 10 where the traders were there but the back
 11 office operations were handled in New
 12 York, except for the margin department,
 13 which was in Bermuda.

14 Q. Did the operations in --
 15 strike that.

16 Did RCM's operations in
 17 Bermuda cease in 2001 or 2002?

18 A. Yes.

19 Q. And how did that come about?

20 A. I became president of Refco
 21 Capital Markets in 2002. Or 2000. And
 22 decided that I was going to close the
 23 operations. And move -- well, there are
 24 two things. One, as I closed the
 25 securities operations sooner than that,

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1 SANTO C. MAGGIO
 2 it was '97 or '98. And the FX operations
 3 or the FX trading group, there was no
 4 reason for them to be there, and I just
 5 moved them out in that year.

6 Q. Why was there no reason for
 7 them to be there?

8 A. Well, originally our largest
 9 client was in Bermuda. Both for foreign
 10 exchange and also for securities. And it
 11 was good business to stay close to them.
 12 However, those clients left the business.
 13 And now it was just nothing but a party
 14 for everyone there, so I decided to shut
 15 them down.

16 Q. So in other words, there was
 17 nothing for the employees to do in
 18 Bermuda anymore?

19 A. Except to go to the beach and
 20 go fishing and ride their mopeds.

21 Q. Was there at that point any
 22 discussion at Refco about repatriating
 23 RCM to the United States?

24 MR. RIEMAN: Objection to
 25 form.

1 SANTO C. MAGGIO
 2 A. Repatriating, excuse me, what
 3 do you mean by repatriating?

4 Q. Did RCM remain a Bermuda
 5 entity up until the time you left?

6 MR. RIEMAN: Objection to
 7 form.

8 A. Yes.

9 Q. Was there any discussion about
 10 making it a United States entity at that
 11 point in time?

12 A. Yes.

13 Q. And what were those
 14 discussions?

15 A. When we closed the securities
 16 operations, not the foreign exchange, the
 17 securities operations in the '90s, I was
 18 very concerned that we would lose the
 19 status of being an offshore
 20 broker/dealer. And if we lost that
 21 status, we may have to regulate -- we
 22 would have to make it an onshore
 23 broker/dealer. In which case we would
 24 have to be regulated. And then we would
 25 lose the customer funds that we needed to

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1 SANTO C. MAGGIO
 2 run Refco Group's businesses, as well as
 3 may have to put up additional capital to
 4 support the business.

5 Q. Was there anyone within Refco
 6 who suggested that they should make RCM
 7 an onshore broker/dealer?

8 A. In the mid-'90s?

9 Q. Um-hum.

10 A. I'm trying to think when I
 11 shut down that operations. I know there
 12 was concern in our Miami office from the
 13 people there.

14 Q. What was the concern raised by
 15 the people in the Miami office?

16 A. That because the business was
 17 being conducted out of Miami and New
 18 York, that it had to be a regulated
 19 broker/dealer.

20 Q. Who was raising those
 21 concerns?

22 A. Just people in my office. I
 23 don't recall who in the Miami office.

24 Q. Do you recall the names of
 25 anyone who raised the concern?

1 SANTO C. MAGGIO
 2 A. It could have been Victor
 3 Henriquez, Sixto Campano.

4 Q. Who were they?

5 A. At that time Sixto was the
 6 second in charge of Miami, it was Hencorp
 7 Beystone/Miami office. And Victor
 8 Henriquez I think was CEO.

9 Q. And were these two individuals
 10 who thought that RCM should be made a
 11 United States entity?

12 A. Or that we should conduct the
 13 business out of Refco Securities, which
 14 was the U.S. broker/dealer.

15 Q. Anybody else at Refco other
 16 than those two individuals at any time
 17 who suggested that RCM should be made an
 18 onshore broker/dealer?

19 A. Yes.

20 Q. And who was that?

21 A. Well, in the early 2000s, we
 22 had an incident with, there was an
 23 investigation regarding a stock called,
 24 trading in a stock called Sedona. And at
 25 that time I think Mr. Klejna was